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97TH CONGRESS
1st Session

SENATE

TREATY DOC.
No. 97-5

TREATY WITH NEW ZEALAND ON THE DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND TOKELAU

ORIGINAL

COMPLETED

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND NEW ZEALAND ON THE DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND TOKELAU, SIGNED AT TOKELAU ON DECEMBER 2, 1980

MARCH 25, 1981.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
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LETTER OF TRANSMITTAL

THE WHITE HOUSE,
March 25, 1981.

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Treaty between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between the United States of America and Tokelau. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Treaty.

This Treaty is necessary to settle the overlapping claims of jurisdiction resulting from the establishment of a 200 nautical mile fishery conservation zone off the coasts of American Samoa in accordance with the Fishery Conservation and Management Act of 1976, and the establishment by the Government of New Zealand of a 200 naulations with New Zealand and with Tokelau.

In this connection, the status of three Tokelauan islands has also been resolved and the sovereignty of the United States over Swains Island has been confirmed.

The Treaty satisfies the interest of the peoples of Tokelau and New Zealand that the Tokelauan claim to sovereignty over three of these islands, inhabited by natives of Tokelau and administered by New Zealand, will not be encumbered by a confiicting but inferior claim by the United States. The Treaty protects United States interests by confirming United States sovereignty over Swains Island, which had been claimed by Tokelau, and by securing a maritime boundary in accordance with equitable principles. It further serves the United States foreign policy interests in the area by promoting friendly relations with New Zeland and with Tokelau.

I am transmitting for the information of the Senate a document from the Government of New Zealand vesting the Tokelauan signatories with authority to sign the Treaty on behalf of New Zealand and a separate exchange of letters between the United States and New Zealand, signed on December 2, 1980, setting forth the understanding of each side that New Zealand is willing to make arrangements for United States fishermen to have access to the Tokelauan 200 mile zone.

I recommend that the Senate give early consideration to the Treaty and give its advice and consent to ratification.

RONALD REAGAN.

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LETTER OF TRANSMITTAL

DEPARTMENT OF STATE,
Washington, March 12, 1981.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, for transmittal to the Senate for its advice and consent to ratification, the Treaty between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between the United States of America and Tokelau, signed at Tokelau on December 2, 1980. The Treaty establishes the maritime boundary between American Samoa and Tokelau, resolves the status of three Tokelauan islands in the area, and confirms United States sovereignty over Swains Island.

The establishment of a 200 nautical mile fishery conservation zone off the coasts of the United States, including American Samoa, pursuant to the Fishery Conservation and Management Act of 1976, and the establishment by New Zealand of a 200 nautical mile zone off the coasts of Tokelau, created the need for agreement on a maritime boundary in order to avoid enforcement problems and to provide for certainty in the development of resources in the area where such 200 nautical mile zones overlap.

In connection with establishing the maritime boundary it was necessary to address and resolve the issue of sovereignty over the islands of Atafu, Nukunono, and Fakaofo which together comprise Tokelau. These atolls have a total population of 166 people and a land area of four square miles. In 1889 the British declared a protectorate over the islands and formally annexed them in 1916. In 1925 administration of the Tokelau islands was transferred from the United Kingdom to the Dominion of New Zealand, which has continued to administer them. Formal sovereignty was transferred from the United Kingdom to New Zealand in 1948.

It was not until 1939 that the United States disputed the British or New Zealand claims of sovereignty. The United States based its claim to the islands on mapping and on the Guano Act of 1856. Two of the islands were included in a United States Guano Mining Bond in 1856 but there is no indication that an American company has ever mined the islands for guano. The United States has never occupied these islands or exercised governmental jurisdiction over them. Measured against the longstanding United Kingdom/New Zealand claim, the United States claim to these islands has no substantial basis under applicable principles of international law. Our claim is not supported by any other nation, including our closest allies. Continued assertion of these claims is inconsistent with the United States inter-

est of maintaining friendly relations with the peoples of the South Pacific. The islands have no appreciable strategic or economic value to the United States.

Delimitation o fthe maritime boundary also involves the issue of sovereignty over Swaims Island in Amerian Samoa. Swains, a privately owned island, was annexed to American Samoa in 1925. The Tokelauans have claimed that Swains Island is historically and culturally part of Tokelau, and they have so informed the United Nations. This Treaty effectively extinguishes the Tokelauan claim and confirms United States sovereignty over Swains.

The Treaty was negotiated through diplomatic channels and was concluded between the United States and New Zealand, rather than Tokelau, because Tokelau is a non-self-governing dependency of New Zealand. The Treaty was signed by the United States Ambassador to New Zealand and by Itieli Pereira, Amusia Patea, and Aloision Ineleo of Tokelau, who were authorized to act on behalf of New Zealand.

The operative portion of the Treaty consists of seven articles.

Article I sets out the specific geographic coordinates which define the maritime boundary. This boundary is approximately 318 nautical miles in length, and consists of 7 segments. At its closest point it is 48 nautical miles from the nearest American Samoa island. The boundary was negotiated on the basis of internationally accepted principles deemed by the parties to be applicable in view of the relevant geographic circumstances.

Article II sets out the geodetic and computational bases used for describing the boundary, including the particular charts from which calculations were made in establishing the boundary.

Article III describes the legal effect of the maritime boundary. It provides that on the Tokelau side of the boundary, the United States will not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil, and that, on the United States side of the boundary, there shall not be claimed or exercised for any purpose in respect to Tokelau sovereign rights or jurisdiction over the waters or seabed and subsoil. Since Swains Island lies on the American side of the boundary, this effects the renunciation by New Zealand of all claims to that island with respect to Tokelau. Further, the preamble states that New Zealand has never claimed or administered as part of Tokelau any of the islands presently administered by the United States as part of American Samoa, which, by statutory definition, includes Swains.

Article IV is a disclaimer provision which makes clear that agreement on the maritime boundary does not constitute recognition of the jurisdiction that the other party may claim to exercise in the delimited area beyond that otherwise recognized by each party to the Treaty. In this connection the United States and New Zealand maintain different positions concerning the breadth of the territorial sea and the nature of jurisdiction that may be exercised within the 200 nautical mile zone. Article IV is intended to preserve the respective positions of each party.

Article V is an express statement that the United States by virtue of this Treaty recognizes that sovereignty over the islands of Atafu,

Nukunono, and Fakaofo is vested in the people of Tokelau and exercised on their behalf by the Government of New Zealand.

Article VI is a general cooperation provision. It is in the United States interest to cooperate with New Zealand in order to promote the social and economic development and stability of the region.

Article VII provides that the English language text is the official Treaty text and that the Treaty will enter into force on the date of the exchange of instruments of ratification.

In connection with the negotiation of the Treaty, discussions took place relating to the fishery resources within the Tokelau Islands' 200 nautical mile zone. The attached letters set forth the positions and the understandings of the two sides. The United States sought and received assurances that United States flag fishing vessels and foreign vessels supplying the canneries in American Samoa will not be barred from seeking licenses to fish in the Tokelauan 200 mile zone. I recommend that this separate exchange of letters be transmitted to the Senate for its information.

I recommend that this Treaty be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

ALEXANDER M. HAIG, JR.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND NEW ZEALAND ON THE DELIMITATION OF THE MARITIME BOUNDARY BETWEEN TOKELAU AND THE UNITED STATES OF AMERICA

The two Governments,

Recalling the responsibilities exercised by New Zealand in respect of Tokelau pending the exercise by the people of Tokelau of their right to self-determination in accordance with the United Nations declaration on the granting of independence to colonial countries and peoples;

Noting that the people of Tokelau, acting through the General Fono of Tokelau, have requested that New Zealand take steps to delimit the maritime boundaries of Tokelau;

Desiring to strengthen the existing bonds of friendship between Tokelau and the United States and in particular between the peoples of Tokelau and American Samoa;

Noting the Tokelau Territorial Sea and Exclusive Economic Zone Act 1977;

Noting the Fishery Conservation and Management Act 1976 of the United States of America;

Noting that the United States of America has maintained a claim to sovereignty over the islands of Atafu, Nukunonu, and Fakaofo and that this claim has not been recognised by New Zealand or the people of Tokelau;

Noting further that the United States exercises sovereignty over and administers the islands known as American Samoa and that New Zealand has not claimed or administered as part of Tokelau any of the islands presently administered by the United States as part of American Samoa;

Desiring to establish a maritime boundary between Tokelau and the United States of America have agreed, with the concurrence of the people of Tokelau, as follows:

ARTICLE I

The maritime boundary between Tokelau and the United States shall be determined by the geodetic lines connecting the following coordinates:

Latitude (South)	Longitude (West)
10°01′26″	168°31′25″
10°07′52″	169°46′50″
10°10′18″	170°16′10″
10°15′17″	171°15′32″
10°17′50″	171°50′58″
10°25′26″	172°11′01″
10°46′15″	173°03′53″
11°02′17″	173°44′48″

Article II

The geodetic and computational bases used for determining the coordinate values in Article I are the World Geodetic System, 1972 (WGS 72) and the following charts and aerial plans:

—Charts published by the National Ocean Survey of the United States of America; NOS No. 83484, 6th edition, March 26, 1977;

—Charts published by the Defense Mapping Agency of the United States of America; DMAHTC No. 83473, 7th edition, May 8, 1976;

—Aerial Plans published by the Department of Lands and Survey of New Zealand; No. 1036/7C, 1974; No. 1036/7B2, 1974; No. 1036/8d, 1975.

Article III

On the side of the maritime boundary adjacent to Tokelau, the United States of America shall not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil. On the side of the maritime boundary adjacent to American Samoa there shall not be claimed or exercised for any purpose in respect to Tokelau sovereign rights or jurisdiction over the waters or seabed and subsoil.

Article IV

The maritime boundary established by this Treaty shall not affect or prejudice in any manner either Government's position with respect to the rules of international law concerned with the exercise of jurisdiction over the waters or seabed and subsoil or any other matter relating to the Law of the Sea.

Article V

The United States recognises that sovereignty over the islands of Atafu, Nukunonu and Fakaofo, together comprising Tokelau is vested in the people of Tokelau and is exercised on their behalf by the Government of New Zealand pending an act of self-determination in accordance with the Charter of the United Nations.

Article VI

The Government of the United States of America and the Government of New Zealand, in the spirit of peace and friendship existing between the two Governments and peoples agree to cooperate with a view to promoting social and economic development in accordance with the wishes of the peoples of Tokelau and American Samoa, and to work towards the advancement of the South Pacific region as a whole. To these ends they shall promote discussions between their peoples and appropriate Government entities, in particular between the peoples of Tokelau and American Samoa.

ARTICLE VIII

This Treaty shall be subject to ratification and shall enter into force on the date of exchange of instruments of ratification.

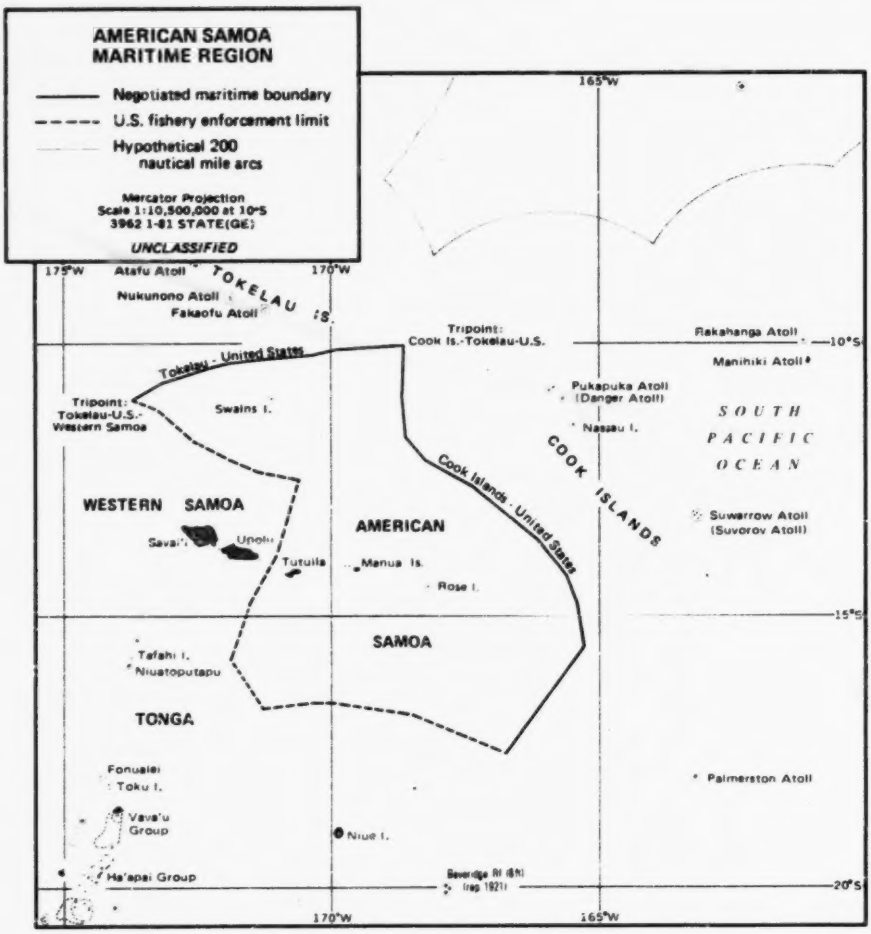
Done in triplicate at Atafu this second day of December 1980, in the English and Tokelauan languages of which the English will be the authentic text.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Anne C. Martindell

FOR THE GOVERNMENT OF NEW ZEALAND

Gluëli Peteru.
Aloisio Sotua
Aloisio Iuelu



[SEAL]

I, Brian Edward Talboys, Minister of Foreign Affairs of New Zealand do hereby certify that Amusia Patea, Faipule of Atafu, (or, alternatively, Elia Tinielu, Pulenuku of Atafu) and Itieli Pereira, Faipule of Fakaofo, (or, alternatively, Pulunone Levao, Pulenuku of Fakaofo) and Aloisio Kave Ineleo, Faipule of Nukunonu, (or, alternatively, Senio Sakalia, Acting Faipule of Nukunonu) are vested with full power and authority to sign on behalf of New Zealand the Treaty between New Zealand and the United States of America on the Delimitation of the Maritime Boundary between Tokelau and the United States of America.

IN WITNESS WHEREOF, I have signed and sealed these presents at Wellington this 26th day of November 1980.

BRIAN TALBOYS.

DECEMBER 2, 1980.

MR. F. H. CORNER,
Administrator of Tokelau,
Ministry of Foreign Affairs,
Wellington.

DEAR MR. CORNER: The Government of the United States welcomes the statement of policy by the Government of New Zealand, recalled in your letter of this date, that the resources of the Tokelau 200-mile zone should be exploited for the exclusive benefit of the people of Tokelau. In this regard, the Government of the United States understands that it would be consistent with this policy for applications to fish in the Tokelau 200-mile zone by United States flag vessels on such terms and conditions as may be applicable to be sympathetically considered.

Sincerely yours,

THOMAS R. PICKERING.

DECEMBER 2, 1980.

HON. THOMAS R. PICKERING,
Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, Department of State, Washington, D.C.

DEAR MR. PICKERING: I have the honour to refer to the negotiation in Wellington of the Treaty Between New Zealand and the United States of America on the Delimitation of the Maritime Boundary Between Tokelau and the United States of America. During this negotiation discussions concerning fisheries within the 200 mile zone of Tokelau were held in which the question of access to the fishery resources of Tokelau was raised. It was noted that United States flag vessels have not in the past normally engaged in fishing in these waters, but that they may wish to do so in the future. In this connection, I wish to recall that the representative of the Government of New Zealand stated that New Zealand's policy was that the resources of the Tokelau 200 mile zone should be exploited for the exclusive benefit of the people of Tokelau. To this end, and in the interest of maximising the benefits for the people of Tokelau, New Zealand wished to encourage development of the fishing resources of the Tokelau 200 mile zone to the greatest possible extent.

I wish to recall further that the representative of the Government of New Zealand referred to the fact that in accordance with this policy New Zealand is negotiating access arrangements covering future fishing activities by those parties currently engaged in fishing in the Tokelau zone which supply the canneries in American Samoa. Moreover, he stated that in furtherance of this policy, the Government of New Zealand is concerned to promote all other possibilities for the development of Tokelau's fishing resources including the encouragement of fishing by vessels such as those of the United States that have not previously fished in these waters. In this connection he noted that Tokelau law permitted the licensing of individual vessels where appropriate.

Yours sincerely,

FRANK CORNER,
Administrator of Tokelau.

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